



Oregon Department of Human Services

Policy Transmittal

Originating Cluster:

Seniors and People with Disabilities

Authorized by: Cathy A. Cooper, Deputy
Assistant Director

Date: October 30, 2003

Signature

Transmitting (check the box that best applies):

- ☐ New Policy ☒ Policy Change ☒ Policy Clarification ☒ Executive Letter
☒ Administrative Rule ☐ Manual Update ☐ Other _____

Applies to (check all that apply):

- ☒ Area Agencies on Aging ☒ Community Human Services
☐ Children Adults and Families ☒ Seniors and People with Disabilities
☐ Health Services ☐ All DHS employees
☐ County Mental Health Directors ☐ County DD Program Managers
☐ Other (please specify): _____

Policy Title:	Revised Service Priority/Clients Served Rules		
Topic Area:	Title XIX Services for Aged and Physically Disabled Adults		
Policy Number(s):	SPD-PT-03-042	Release No:	
Effective Date:	October 27, 2003	Expiration:	N/A
References:	OAR 411-015-0005, 411-015-0010 and OAR 411-015-0015		
Web Address:			

Discussion/Interpretation: The Service Priority/Clients Served rules, effective June 4, 2003, have been amended for clarification purposes. A number of hearings and field questions have indicated the need to immediately provide more specific language for Assistance and Full Assistance in each ADL category to assure that current policy is applied correctly across the state.

In OAR 411-015-0005, the revised language designates a 60-day time frame of reference when assessing an individual's ADL functions, the period 30 days prior to and 30 days following the assessment date.

A number of ADL assistance needs now list precise frequencies, replacing terms such as "regular", "occasional" or "frequently". "Assistive Devices" is now listed and defined in number (6) of this rule. In OAR 411-015-0015 (4) (c), this section was separated into two sentences for further clarity. The remainder of changes in these rules are basically word exchanges and sentence restructuring for a more consistent format throughout the document.

Implementation/Transition Instructions:

Training/Communication Plan: CA/PS Help in Oregon ACCESS have been updated to reflect clarifications. SPD central office has incorporated these rules into the current case management training curriculum. Six special training sessions on these rule changes have been presented specifically for AAA/SPD managers.

Local/Branch Action Required: SPD/AAA managers, whose field offices serve senior and physically disabled adults, should review these OAR changes with case managers and local technical assistance staff. These definitions are to be used consistently when assessing and reassessing clients for service eligibility.

Central Office Action Required: Rules have been filed with the Secretary of State, including field notices and training scheduled. A committee has been formed to review the need for substantive rule revisions and consideration of additional medical factors in determining service eligibility. That committee has begun meeting to review the service priority rule and make recommendations.

Field/Stakeholder review: ☐ Yes, reviewed by: _____ ☐ No

Filing Instructions: N/A

If you have any questions about this policy, contact:

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Attachment: OARs 411-015-0000 through 411-015-0100

**Department Of Human Services
Seniors and People With Disabilities**

**OREGON ADMINISTRATIVE RULES
Chapter 411, Division 015**

SERVICE PRIORITY/CLIENTS SERVED

411-015-0000 *(Effective 06/04/2003)*

Purpose

The purpose of establishing priorities for persons to be served is to assist the Department in addressing the following goals:

- (1) To enable persons eligible for and receiving services to remain in the least restrictive and least costly setting consistent with their care needs; and
- (2) To serve those persons who are the most functionally impaired and who have no or inadequate alternative service systems; and
- (3) To assure access to services paid by the Department to eligible persons; and
- (4) To assure that services paid by the Department, and the setting in which they are provided are safe and adequate; and
- (5) To manage limited resources to enable the greatest possible number of persons to receive needed services through a priority system based on the Department's assessment of the client's functional impairment and alternative service resources.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.070

411-015-0005 *(Effective 10/27/2003 - Temporary)*

Definitions

- (1) "Activities of Daily Living (ADL)" means those personal functional activities

required by an individual for continued well-being which are essential for health and safety. This includes, but is not limited to eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

- (2) "Alternative Service Resources" means other possible resources for the provision of services to meet the person's needs. This includes, but is not limited to, natural physical/social support systems, Risk Intervention services, Older Americans Act programs, or other community resources.
- (3) "Assessment" for service eligibility means the process of evaluating the functional impairment levels including the individual's requirements for assistance or independence in performing activities of daily living, and determining nursing facility care. The Department requires use of the Client Assessment and Planning System (CA/PS) as the tool used to determine service eligibility and planning. When assessing an individual, the time frame reference for evaluation is how the person functioned during the thirty days prior to the assessment date, with consideration of how the person is likely to function in the thirty days following the assessment date.
- (4) Assistance Types needed for activities of daily living include, but are not limited to the following terms:
 - (a) "Cueing" means giving verbal or visual clues during the activity to help the individual complete activities without hand-on assistance.
 - (b) "Hands-on" means a provider physically performs all or parts of an activity because the individual is unable to do so.
 - (c) "Monitoring" means a provider must observe the individual to determine if intervention is needed.
 - (d) "Reassurance" means to offer encouragement and support.
 - (e) "Redirection" means to divert the individual to another more appropriate activity.
 - (f) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual can perform an activity.

- (g) “Stand-by” means a person must be at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.
 - (h) “Support” means to enhance the environment to enable the individual to be as independent as possible.
- (5) “Assistance/Full Assistance” are defined for each activity of daily living as follows:
- (a) Bathing/Personal Hygiene: This is comprised of two components. To be considered Assist, the individual must require Assistance in Bathing or Full Assistance in Hygiene. To be considered Full Assist, the individual must require Full Assistance in Bathing.
 - (A) Bathing means the activities of bathing and washing hair and if needed, using assistive devices. Bathing includes the act of getting in and out of the bathtub or shower.
 - (i) Assist: The individual requires assistance from another person with bathing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity or stand-by presence for the duration of activity.
 - (ii) Full Assist: The individual requires at least one other person to provide bathing, even with assistive devices. This means hands-on assistance in all phases of the task.
 - (B) Personal Hygiene means the activities of shaving and caring for the mouth.
 - (i) Assist: The individual requires assistance from another person with personal hygiene, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity or stand-by presence for the duration of the activity.
 - (ii) Full Assist: The individual cannot do personal hygiene, even with assistive devices, without the regular

assistance of another person. This means hands-on assistance for all phases of the task.

(b) Cognition/Behavior means functions of the brain, which assist in orientation to person, place and/or time, decision-making, learning, memory, and behaviors, which may affect living arrangements and/or jeopardize safety of self or others. Evaluation of functional limitation without support is based on eight components. To be considered Assist, the individual must require Assistance in at least three of the eight components. To be considered Full Assist, the individual must require Full Assistance in at least three of the components.

(A) Adaptation means response to major changes in relationship to the individual's environment, such as the possibility of a change in living situation, death of significant other, etc.

(i) Assist: The individual requires reassurance with change. These are multiple occurrences, less than daily.

(ii) Full Assist: The individual requires constant support and reassurance or is unable to adapt to change. These occurrences are ongoing and daily.

(B) Awareness means accurate understanding of needs relating to health, safety, and welfare of the individual.

(i) Assist: The individual has difficulty understanding those needs, which must be met, requiring the assistance of another person.

(ii) Full Assist: The individual does not have the capacity to understand those needs.

(C) Danger to Self or Others means behaviors, other than wandering, which may be a danger to the individual (including self injury), or to those around the individual.

(i) Assist: The individual is disruptive or aggressive in a non-physical way, agitated, or sexually inappropriate and this occurs at least monthly. These behaviors are challenging and the individual can be verbally redirected.

- (ii) Full Assist: The individual is disruptive or aggressive in a non-physical way, is agitated, or is dangerous, physically abusive, or sexually aggressive. These behaviors are extreme, may be unpredictable, and necessitate intervention beyond verbal redirection.
- (D) Demands on Others means behaviors, other than wandering, which negatively impact and affect living arrangements, providers and/or other residents.
 - (i) Assist: The individual's habits and emotional states limit the types of living arrangements and companions, but can be modified with individualized routines, changes to the environment e.g. roommates and/or non client specific training for the caregiver.
 - (ii) Full Assist: The individual's habits and emotional states can be modified only with a 24-hour specialized care setting and/or a client specific behavioral care plan that all staff are trained to deliver.
- (E) Judgement means the ability to make informed decisions and conduct activities that affect the ability to function independently. This includes understanding the consequences of decisions that jeopardize the health, safety, and welfare of the individual.
 - (i) Assist: At least weekly, the individual needs protection, monitoring and guidance to make decisions.
 - (ii) Full Assist: The individual's decisions require daily intervention by another person.
- (F) Memory means the ability to remember and appropriately use current information, which impacts the health, safety and welfare of the individual.
 - (i) Assist: The individual has difficulty remembering and using current information and requires reminding.

- (ii) Full Assist: The individual cannot remember or use information and requires directions beyond reminding.
- (G) Orientation means accurate understanding of person, place, and time as it relates to the ability of the individual to function independently.
 - (i) Assist: The individual is disoriented to person, place or time. These occurrences are episodic during the week; less than daily.
 - (ii) Full Assist: The individual is disoriented to person, place or time and such occurrences are daily.
- (H) Wandering: Moving about aimlessly, or elopement, without relationship to needs or safety.
 - (i) Assist: The individual wanders within the home or facility, but does not jeopardize safety.
 - (ii) Full Assist: The individual wanders inside or out and jeopardizes safety.
- (c) Dressing/Grooming: This is comprised of two elements. To be considered Assist, the individual must require Assistance in Dressing or Full Assistance in Grooming. To be considered Full Assist the individual must require Full Assistance in Dressing.
- (A) Dressing means the activities of dressing and undressing.
 - (i) Assist: The individual requires assistance from another person to do parts of dressing or undressing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity, or stand-by presence for the duration of the activity.
 - (ii) Full Assist: The individual must be dressed or undressed by another person, even with assistive devices. Hands-on assistance is required for every phase of dressing activity.

- (B) Grooming means nail care and the activities of brushing and combing hair.
 - (i) Assist: The individual requires help to do part of the task, even with assistive devices.
 - (ii) Full Assist: The individual cannot do any part of the task, even with assistive devices.
- (d) Eating means the activity of feeding and eating and may include using assistive devices.
 - (A) Assist: When eating, the individual requires another person to be immediately available and within sight. This requires hands-on feeding, hands-on assistance with special utensils, cueing during the act of eating, or monitoring to prevent choking or aspiration. This is a daily need or can vary if an individual's medical condition fluctuates significantly during a one-month period.
 - (B) Full Assist: When eating, the individual always requires one-on-one assistance for direct feeding, constant cueing, or to prevent choking or aspiration. This includes nutritional IV or feeding tube set-up by another person.
- (e) Elimination: This is comprised of three components. To be considered Assist, the individual must require Assistance in at least one of the three components. To be considered Full Assist the individual must require Full Assist in any of the three components.
 - (A) Bladder means managing bladder care.
 - (i) Assist: The individual requires assistance from another person, for parts of the activity, even with assistive devices or supplies, to manage dribbling, incontinence, catheter, or sheath changes. This occurs at least monthly.
 - (ii) Full Assist: The individual always requires another person for all phases of bladder care or catheter care.

- (B) Bowel means managing bowel care.
 - (i) Assist: The individual requires assistance from another person to manage incontinence, ostomy care or suppository insertion, even with assistive devices or supplies. This occurs at least monthly.
 - (ii) Full Assist: The individual always requires another person to provide all phases of bowel care.
- (C) Toileting means the activity of getting to and from the toilet (including bedpan, commode and urinal), cleansing after elimination or adjusting clothing, cleaning and maintaining assistive devices, or cleaning the toileting area after elimination because of unsanitary conditions that would pose a health risk. This does not include routine bathroom cleaning.
 - (i) Assist: At least monthly, the individual requires assistance from another person to perform any part of the task, even with assistive devices and supplies.
 - (ii) Full Assist: The individual always requires another person to manage all care.
- (f) Mobility: This is comprised of two components, Ambulation and Transfer. In the Mobility cluster only, assistance is categorized into three levels. To be considered Minimal Assist, the individual must require Minimal Assistance in Ambulation. To be considered Substantial Assist, the individual must require Substantial Assistance with Ambulation or an Assist with Transfer. To be considered Full Assist, the individual must require Full Assistance with Ambulation or Transfer. Mobility does not apply to the activities of getting in and out of a motor vehicle or a bathtub/shower or to and from the toilet. When assessing an individual's mobility, consider how the person ambulates and transfers within their home or care setting.
- (A) Ambulation means the activity of moving around both inside and outside, using assistive devices, if needed. Ambulation does not include exercise or physical therapy.
 - (i) Minimal Assist: The individual can get around inside with

assistive devices, if needed, without the assistance of another person, but requires assistance from another person when outside or in an unfamiliar environment.

- (ii) Substantial Assist: The individual requires the occasional assistance of another person both outside and in a familiar environment, such as the home, even with assistive devices.
- (iii) Full Assist: The individual cannot get around, even with assistive devices, without ongoing assistance from another person.

(B) Transfer means the activity of moving to or from a chair, bed or wheelchair using assistive devices, if needed.

- (i) Assist: The individual can transfer, with assistive devices if needed, only if assisted by another person. This includes hands-on help for weight-bearing individuals or stand-by presence for safety in transfer.
- (ii) Full Assist: The individual cannot transfer even with assistive devices, and is dependent on one or more other persons to perform the transfer. This includes hands-on transfer for non-weight bearing individuals

- (6) “Assistive Devices” means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual’s independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual in performing an ADL.
- (7) “Client Assessment and Planning System (CA/PS) is a single entry data system used for completing a comprehensive and holistic client assessment, comprised of critical elements of the individual’s physical, mental, and social functioning, including identification of risk factors and outcome measurements. The CA/PS calculates the individual’s service priority status, level of care and service payment rates, and accommodates client participation in care planning.

- (8) "Department" means the Department of Human Services/Seniors and People with Disabilities.
- (9) "Functional Impairment" means a person's pattern of mental and physical limitations which, even in the best of environments, permanently or temporarily restrict his or her capability of functioning independently.
- (10) "Home and Community Based Care Waiver Services" means services approved for Oregon by the Centers for Medicare and Medicaid Services for aged and physically disabled persons in accordance with Sections 1915 (c) and 1115 of Title XIX of the Social Security Act.
- (11) "Independent" means the individual does not meet the definition of "Assist" or "Full Assist".
- (12) "Service Priority" means the order in which Department clients are found eligible for nursing home, HCB waivers, spousal pay program, and Oregon Project Independence.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.070

411-015-0010 *(Effective 10/27/2003 - Temporary)*

Priority of Paid Services

To meet service priority, an individual must be found eligible, using CA/PS as the assessment tool, as meeting at least the requirements for Assist or Full Assist in activities of daily living, in the following order and as designated in OAR 411-015-0015.

- (1) Requires Full Assistance in Mobility, Eating, Elimination, and Cognition.
- (2) Requires Full Assistance in Mobility, Eating, and Cognition.
- (3) Requires Full Assistance in Mobility, or Cognition, or Eating.
- (4) Requires Full Assistance in Elimination.
- (5) Requires Substantial Assistance with Mobility, Assistance with Elimination and Assistance with Eating.

- (6) Requires Substantial Assistance with Mobility and Assistance with Eating.
- (7) Requires Substantial Assistance with Mobility and Assistance with Elimination.
- (8) Requires Minimal Assistance with Mobility and Assistance with Eating and Elimination.
- (9) Requires Assistance with Eating and Elimination.
- (10) Requires Substantial Assistance with Mobility.
- (11) Requires Minimal Assistance with Mobility and Assistance with Elimination.
- (12) Requires Minimal Assistance with Mobility and Assistance with Eating.
- (13) Requires Assistance with Elimination.
- (14) Requires Assistance with Eating.
- (15) Requires Minimal Assistance with Mobility.
- (16) Requires Full Assistance in Bathing or Dressing.
- (17) Requires Assistance in Bathing or Dressing.
- (18) Independent in the above levels but requires structured living for supervision for complex medical problems or a complex medication regimen.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.070

411-015-0015 (*Effective 10/27/2003 - Temporary*)

Current Limitations

The Department has the authority to establish by Administrative Rule the priority level within which to manage its limited resources. The Department is currently able to serve:

- (1) Persons determined eligible for OSIPM, TANF or GA if they are assessed on CA/PS in conjunction with the priority levels of OAR 411-015-0010: and
 - (a) Who are assessed as meeting at least one of the priority levels (1) through (14) will be served through March 31, 2003; and
 - (b) Who are assessed as meeting at least one of the priority levels (1) through (11) will be served from April 1, 2003 thereafter, or unless otherwise stated by future amendments to this rule.
- (2) Persons eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.
- (3) Persons needing Risk Intervention Services in areas designated to provide such services. Persons with the greatest priority under OAR 411-015-0010 will be served first.
- (4)
 - (a) Persons sixty-five years of age or older determined eligible for Developmental Disability services or having a primary diagnosis of mental illness are eligible for nursing facility and community based care services if they meet Sections (1), (2), or (3) of this rule and are not in need of specialized mental health treatment services or other specialized Department residential program intervention as identified through the PASARR or mental health assessment process.
 - (b) Persons under sixty-five years of age determined eligible for developmental disability services or having a primary diagnosis of mental illness are not eligible for Department nursing facility services unless determined appropriate through the PASARR process.
 - (c) Persons under sixty-five years of age whose primary diagnosis and primary need for service is due to mental illness are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the Department's 1915(c) Waiver for seniors and people with physical disabilities. Persons under sixty-five years of age whose primary diagnosis is based on a developmental disability are not eligible for Title XIX 1915 (c) Waiver services for seniors and people with physical disabilities.

Stat. Auth.: ORS 410.060, 410.070 & ORS 411
Stats. Implemented: ORS 410.070

411-015-0100 (Effective 06/04/2003)

Eligibility for Nursing Facility or Community-Based Care Services

- (1) To be eligible for nursing facility services, Community-based care waiver services for aged and physically disabled, Independent Choices, Spousal Pay, of, or the Program of All-inclusive Care for the Elderly (PACE), a person must:
 - (a) Be age 18 or older; and
 - (b) Be eligible for OSIPM or TANF; and
 - (c) Meet the functional impairment level within the service priority levels currently served by Seniors and People with Disabilities as outlined in OAR 411-015-0000 and the requirements in OAR 411-015-0015; or
 - (d) To be eligible to have services paid through the State Spousal Pay Program, the person must meet requirements as listed above in (a), (b), (c), and in addition, the requirements in OAR 411-030-0080.
- (2) Persons who are age 17 or younger and reside in a nursing facility are eligible for nursing facility services only. They are not eligible to receive community-based care waiver services, including Spousal Pay or Independent Choices program services.

Stat. Auth.: ORS 410 & ORS 414.065
Stats. Implemented: ORS 410.070

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 10/27//03
(Date prior to or same as filing date)

Department of Human Services, Seniors and People with Disabilities

(Agency and Division)

(Administrative Rules Chapter Number)

Sonya Plummer

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to become effective October 27, 2003 through April 23, 2004
(Date upon filing or later) (A maximum of 180 days including the effective date)

RULEMAKING ACTION

List each rule number separately, 000-000-0000

ADOPT:	
AMEND:	411-015-0005, 411-015-0010 & 411-015-0015
SUSPEND:	

ORS 410 &ORS 414.065

Stat. Auth.

Other Authority

ORS 410.070, ORS 410.070 & ORS 411.060

Stats. Implemented

RULE SUMMARY

The Service Priority/Clients Served rules, effective June 4, 2003, are being proposed for temporary amendment October 27, 2003 to clarify current policy and further define terms and time frames. These proposed temporary rules are intended to: (a) provide more specific language for Assistance and Full Assistance in each Activities of Daily Living (ADL) category to assure current policy is applied correctly; (b) designate a 60-day time frame of reference when assessing an individual's ADL functions; (c) list precise frequencies, replacing terms such as "regular", "occasional" or "frequently;" and (d) define "Assistive Devices."

Authorized Signer

Date

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceeding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceeding workday.

ARC 930-1997

Secretary of State
Temporary Rule Justification and Statement of Need
A Certificate and Order for Temporary Rulemaking accompanies this form

Department of Human Services, Seniors and People with Disabilities

OAR Chapter 411

Agency and Division

Administrative Rules Chapter Number

In the Matter of the temporary amendment of)	Statutory Authority,
Chapter 411, Division 015, Service Priority/Clients)	Statutes Implemented,
Served rules)	Statement of Need,
)	Principal Documents Relied Upon,
		Statement of Fiscal Impact

Statutory Authority: ORS 410 & ORS 414.065

Statutes Implemented: ORS 409.050, ORS 410.070 & ORS 411.060

Need for the Rule(s): These rulemaking actions are being taken to: (a) provide more specific language for Assistance and Full Assistance in each Activities of Daily Living (ADL) category to assure current policy is applied correctly; (b) designate a 60-day time frame of reference when assessing an individual's ADL functions; (c) list precise frequencies, replacing terms such as "regular", "occasional" or "frequently;" and (d) define "Assistive Devices."

Documents Relied Upon: Section 16(b) of Oregon's Home and Community Based Care waiver for aged and physically disabled persons (in accordance with Sections 1915(c) of Title XIX of the Social Security Act) and approved by the Centers for Medicare and Medicaid (CMS).

Justification of Temporary Rule(s): Administrative Law Judges (ALJ) are reversing some of the Department's decisions. In reviewing those reversals, it was discovered that the language of the rules, especially in terms of the frequencies (such as "regular", "occasional", "frequently") were interpreted differently by the ALJ than the actual intent of the rule.

Because of the Department's urgent need to use language that supports the consistent application of the assessment process and to further guide the hearings panel these language changes and addition of precise frequencies is imperative. It is in the general public interest and in the interest of Seniors and People with Disabilities clients to provide this clarification, which will provide guidance to the field in the assessment process and to promote consistent application of current policy.

The Department has issued expectations to the field regarding the consistency in application of the OARs when assessing clients. Additional clarification to the rules assists in meeting that expectation.

The addition of frequencies and the time frame of reference (30 days prior to assessment date, with consideration how the client is likely to function in the next 30 days) to the current OARs will further support the actual intent of the current policy. Case managers will have a much more defined frame of reference to consider when assessing an individual's functional abilities and limitations. Clients will have stronger assurances of consistent application of the assessment process.

Authorized Signer

Date

